UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Bauble Bar, Inc., Plaintiff, vs. International Diamond Importers, Inc., doing business as I.D.I. Design and Meira T Designs, Defendant.	Case No.: **COMPLAINT** **Jury Trial Demanded**

Plaintiff Bauble Bar, Inc. ("Bauble Bar" or "Plaintiff"), by its attorneys, Dentons US LLP, alleges for its complaint, upon knowledge with respect to its own acts and upon information and belief with respect to the acts of all others, as follows:

Nature of the Complaint

1. This is an action at law and in equity for a declaratory judgment holding that Plaintiff has not infringed copyrights or trade dress in jewelry designs as alleged by Defendant International Diamond Importers, Inc., doing business as I.D.I. Design and Meira T Designs ("IDI" or "Defendant"), and has not violated the federal laws of unfair competition.

Parties, Jurisdiction, and Venue

2. Bauble Bar is a Delaware Corporation having a principal place of business at 1115 Broadway, 5th Floor, New York, New York 10010.

3. Upon information and belief, IDI is a New York corporation having a principal place of business at 17 East 48th Street, Room 401, New York, New York 10017.

4. Pursuant to 28 U.S.C. §§2201 and 2202, this Court may declare the rights and other legal relationships of the parties and may order such other relief as may be necessary.

5. This Court has subject matter jurisdiction of the copyright declaratory relief claims under 28 U.S.C. §1331 and under 28 U.S.C. §1338 in that this count arises under the United States Copyright Act, 17 U.S.C. § 101 et seq.

6. This Court has subject matter jurisdiction of the trade dress declaratory relief claims under 28 U.S.C. §1331 and under 28 U.S.C. §1338, in that, this count arises under the United States Lanham Act, 15 U.S.C. § 1051 et seq.

7. This Court has subject matter jurisdiction of the unfair competition declaratory relief claims under 28 U.S.C. §1331 and under 28 U.S.C. §1338 in that this count arises under the United States Lanham Act, 15 U.S.C. § 1051 et seq, 15 U.S.C. § 1125(a).

8. Defendant sent a letter to Plaintiff alleging infringement of Defendant's jewelry design copyright and trade dress and violation of unfair competition laws in connection with two of Plaintiff's original jewelry designs. Plaintiff has vigorously challenged and denied such allegations, but Defendant has maintained its baseless allegations and continues to demand remedies from Plaintiff including an accounting of all sales.

9. An actual case and controversy exists between Plaintiff and Defendant as a result of Defendant's allegations of copyright and trade dress infringement and violation of unfair competition laws by Plaintiff and Defendant's demands for remedies.

10. Defendant is subject to the personal jurisdiction of this court because its principal place of business is located within the Southern District of New York and Defendant derives substantial revenue from sales in the Southern District of New York.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and 1400.

Factual Background

12. Plaintiff Bauble Bar is in the business of designing and selling jewelry.

13. Plaintiff received a letter dated August 3, 2016 from Defendant alleging that two of Plaintiff's jewelry designs (the "Disputed Designs") infringe (i) a jewelry design by Defendant purportedly covered by Copyright Registration Number VA 1-839-495, and (ii) a "Meira T Trade Dress," defined by Defendant as an "off-center asymmetric design comprising a large center jewel or piece with the size and/or quantity of pendants on one side being greater than the other side." The August 3, 2016 letter also alleged that Plaintiff's sale of the Disputed Designs constitutes unfair competition under 15 U.S.C. § 1391. In its letter, Defendant demanded that Plaintiff discontinue all sales of the Disputed Designs and provide (i) the quantity, location, and dollar value of all existing inventories of the Disputed Designs, (ii) a full accounting of all sales of the Disputed Designs, and (iii) the identity and address of the person and/or entity who manufactures the Disputed Designs. (August 3, 2016 letter attached as Exhibit A).

14. On August 18, 2016, Plaintiff sent a letter to Defendant in response to the August 3, 2016 letter, disputing Defendant's allegations. Plaintiff further advised Defendant (without any admission of fault or liability) that it had removed one of the Disputed Designs from its website and such design was no longer for sale (the "First Disputed Design"). With respect to the other Disputed Design (the "Second Disputed Design"), Plaintiff set forth the dissimilarity to Defendant's design. (August 18, 2016 letter attached as Exhibit B).

15. On August 29, 2016, Defendant sent another letter to Plaintiff, in which Defendant appeared to clarify that its purported claims concerning the Second Disputed Design were not based on copyright infringement. Defendant continued to allege, however, that the Second Disputed Design infringed the Meira T Trade Dress. Defendant once again demanded

that Plaintiff cease sales of the Second Disputed Design, and also repeated the other demands from its prior letter. (August 29, 2016 letter attached as Exhibit C).

16. On September 6, 2016, Plaintiff sent a letter to Defendant challenging Defendant's claim of rights to the Meira T Trade Dress. Plaintiff provided evidence of numerous third-party jewelry designs featuring the same elements to which Defendant was claiming exclusive "trade dress" rights. Plaintiff also highlighted that the United States Patent and Trademark Office previously refused registration for the Meira T Trade Dress based on a lack of distinctiveness. Nonetheless, in the interest of resolving the parties' dispute without resorting to litigation and without further disruption to the parties' businesses, and despite Plaintiff's belief that Defendant has no foundation for its allegations, Plaintiff offered to phase-out the Second Disputed Design over a period of six months with an agreement to refrain from reintroducing the Second Disputed Design in the future. (September 6, 2016 letter attached as Exhibit D).

17. On September 19, 2016, Defendant sent another letter to Plaintiff, in which Defendant yet again asserted purported rights in the Meira T Trade Dress. Defendant also repeated various demands, including: (i) a full accounting of all sales (dates, quantity, and price) of ALL Disputed Designs along with any and all sales records evidencing the same, and (ii) the identity and address of the person and/or entity who manufactures, assembles and/or fabricates the Disputed Designs. (September 19, 2016 letter attached as Exhibit E).

18. The three letters that Defendant sent to Plaintiff fail to specify the actual basis for its individual demands. It is therefore unclear what theory of the law is being asserted to support each (or any) of those demands (e.g. copyright infringement, trade dress infringement, or unfair competition). Plaintiff vigorously disputes, however, that Defendant could have any basis at all, under any theory of law, for those demands.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment - Copyright)

19. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

20. The Copyright Act, 17 U.S.C. §101 et seq., and 28 U.S.C. §2201, empowers this Court to declare whether a particular jewelry design infringes upon the copyrights of another jewelry design, and any such declaration shall have the force and effect of a final judgment.

21. Plaintiff seeks a declaratory judgment that the Disputed Designs do not infringe upon any copyrights Defendant's possess in the jewelry design covered by Defendant's Copyright Registration Number VA 1-839-495, and as such, Defendant's demands (in the letters attached hereto as Exhibits A, C, and E) are unwarranted.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment - Trade Dress)

22. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 21 as if fully set forth herein.

23. The Lanham Act, 15 U.S.C. § 1051 et seq., and 28 U.S.C. §2201, empowers this Court to declare whether (1) a party has a valid claim to protectable trade dress in jewelry designs, and (2) whether one party's jewelry design(s) infringe upon another party's alleged trade dress rights in jewelry designs generally, and any such declaration shall have the force and effect of a final judgment.

24. Plaintiff seeks a declaratory judgment that (1) Defendant's claim of trade dress rights in the Meira T Trade Dress in invalid and unenforceable, and (2) the Disputed Designs do not infringe upon the trade dress rights alleged by Defendant; and as such, Defendant's demands (in the letters attached hereto as Exhibits A, C, and E) are unwarranted.

THIRD CLAIM FOR RELIEF
(Declaratory Judgment - Unfair Competition)

25. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 24 as if fully set forth herein.

26. The Lanham Act, 15 U.S.C. § 1051 et seq, 15 U.S.C. § 1125(a), and 28 U.S.C. §2201, empowers this Court to declare whether a party's actions constitute unfair competition in violation of federal law, and any such declaration shall have the force and effect of a final judgment.

27. Plaintiff seeks a declaratory judgment that its actions or conduct with respect to the Disputed Designs do not constitute unfair competition, and as such, Defendant's demands (in the letters attached hereto as Exhibits A, C, and E) are unwarranted.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

(a) On the First Claim For Relief, a judgment declaring that Plaintiff has not in any manner infringed, and is not currently infringing, Defendant's copyrights.

(b) On the Second Claim For Relief, a judgment declaring that Defendant has no valid or enforceable trade dress rights in the alleged Meira T Trade Dress.

(c) On the Second Claim For Relief, a judgment declaring that Plaintiff has not in any manner infringed, and is not currently infringing, Defendant's trade dress.

(d) On the Third Claim For Relief, a judgment that Plaintiff's conduct or action does not constitute unfair competition.

(e) On the First, Second, and Third Claims For Relief, a judgment declaring that Plaintiff is not required to comply with the demands made by Defendant.

(f) On the First, Second, and Third Claims For Relief, reasonable attorneys' fees, costs and expenses, and such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury.

Dated: New York, New York
September 26, 2016

Dentons US LLP

By: /s/ David R. Baum
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